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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/639,928	08/12/2003	Ralph M. Terrazas	59952-010400	7311
33717	7590	08/10/2004	EXAMINER	
GREENBERG TRAUIG LLP 2450 COLORADO AVENUE, SUITE 400E SANTA MONICA, CA 90404			GONZALEZ, MADELINE	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 08/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center">Office Action Summary</p>	Application No. 10/639,928	Applicant(s) TERRAZAS, RALPH M. <i>AK</i>	
	Examiner Madeline Gonzalez	Art Unit 2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20-28 is/are allowed.
- 6) ☒ Claim(s) 1,2,8-15 and 17-19 is/are rejected.
- 7) ☒ Claim(s) 3-7 and 16 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____
5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
6) <input type="checkbox"/> Other: ____ |
|--|--|

DETAILED ACTION

Claim Objections

1. Claims 13, 14 and 18 are objected to because of the following informalities:
 - a) Claim 13: The claim recites the limitation “the fire’s width” in lines 3-4. There is insufficient antecedent basis for this limitation in the claim.
 - b) Claim 14: The claim recites the limitation “the map” in line 4. There is insufficient antecedent basis for this limitation in the claim.
 - c) Claim 18: “one” in line 2 should be replaced with --on--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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3. Claims 1 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Harter (U.S. 4,456,821).

Harter discloses a tool, as shown in Fig. 1, having:

- a geometric plotting element;
- at least one type of rate of spread scale, selectively being at least one of an historical time and real time, related on the surface of the element; and
- wherein the base of the tool contains the real time rate of spread scale that is calibrated into a 30-minute time projection.

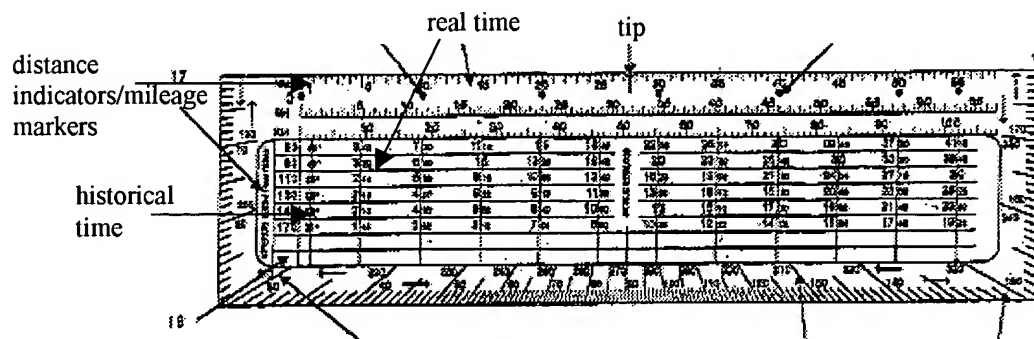
4. Claims 1, 9-15 and 17-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Ganivet (U.S. 6,658,746).

Ganivet discloses a tool, as shown in Fig. 1, having:

- a geometric plotting element 10;
- at least one type of rate of spread scale (the rate of spread is the time for a segment of a route), selectively being at least one of a historical time and real time, related on the surface of the element 10;
- wherein, in use, upon receipt of the real time rate of spread from an observation source, the real time projection is plotted;

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- wherein, in use, the tool is used for multiple projections upon the same map, and selectively different colors can be used for different projections;



- wherein the tool includes historical and real time rate of spread scales, and distance indicators to identify mileage;
- wherein on a long axis of the tool there are mileage markers;
- wherein there is a marker to gauge width, including at its center, a mileage marker indicating a predetermined distance in each direction from the centerline, and wherein in use the long axis is perpendicular to a width;
- wherein the tool contains at least one tip about which the tool is pivotable, the tip of the tool being blunted in shape, the shape being selected to reduce the tendency of breakage of the tip when the tool is used in a pivoting motion while identifying lateral spread upon a map;
- at least one hole 16 in the face of the tool, the holes being sized to accommodate a marker instrument;

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- wherein, in use, when at least one, and preferably three, time zones are marked, the tool is removed, and a straight edge of the tool is used to create a straight line by aligning the edge over the dots to permit the drawing of a straight line;
- holes 16, spaced along mileage markers on the tool at predetermined distance intervals for use when using multi-page maps; and
- wherein a tool scale is employed to ensure a correlating map is used in conjunction with the tool.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ganivet (U.S. 6,658,746).

Ganivet discloses all the subject matter claimed above in paragraph 4 with the exception of the specific shape of the tool and the specific dimensions of the tool.

With respect to the specific shape of the tool: Ganivet discloses a tool having a rectangular shape. The specific shape claimed by applicant, i.e., a triangular shape, is only

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considered to be an obvious modification of the shape of tool disclosed by Ganivet as the courts have held that a change in shape or configuration, without any criticality, is within the level of skill in the art as the particular shape claimed by Applicant is nothing more than one of numerous shapes that a person having ordinary skill in the art will find obvious to provide using routine experimentation based on its suitability for the intended use of the invention. See *In re Dailey*, 149 USPQ 47 (CCPA 1976). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the shape of the tool disclosed by Ganivet with a triangular shape in order to provide a triangular tip to easily grasp the tool.

With respect to the specific dimensions of the tool: Ganivet discloses a tool being of a predetermined length and width. To choose dimensions of about 21" long and about 10 ¼" wide, is only considered to be the " optimum " value of the length and width of the tool disclosed by Ganivet, as stated above, that a person having ordinary skill in the art would have been able to determine using routine experimentation based, among other things, on the desired accuracy and since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. See *In re Boesch*, 205 USPQ 215 (CCPA 1980). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to make the tool disclosed by Ganivet of about 21" long and about 10 ¼" wide in order to easily see the scales.

Allowable Subject Matter

7. Claims 3-7 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claims 20-28 are allowed.

9. The following is a statement of reasons for the indication of allowable subject matter:

Claim 20 is allowed because the prior art of record does not show or suggest a rate of spread tool having a historical rate of spread scale based upon previous large-scale brushfires, in combination with the remaining limitations in the claim.

Claims 21-28 are allowed due to their dependency on claim 20.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pedersen et al. ('981) discloses fire detection systems and methods. Blumberg et al. ('515) discloses a system and method for providing information based on geographic position. Cornwell et al. ('752) discloses a method and apparatus for directing community response to hazardous material release. Blank et al. ('120), Schindler and Sanderson disclose related time-

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distance calculators. Taylor, Jr. and Cheung disclose plotters. Burns discloses a storm mapping system. Spears discloses a tumor growth measurement device.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Madeline Gonzalez whose telephone number is (571) 272-2243. The examiner can normally be reached on Monday-Friday (8:00-5:30), alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MG



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